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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Ancillary or Supplementary Use of ) MM Docket No. 98-203  
Digital Television Capacity )  
By Noncommercial Licensees )

To: The Commission

COMMENTS OF NATIONAL DATACAST, INC.

1. National Datacast, Inc. (National Datacast) is a for-profit subsidiary of the Public Broadcasting Service (PBS) which manages nationwide data distribution and broadcasting services utilizing the vertical blanking interval on the analog signal of public television stations. National Datacast is owned by PBS and several individual public television stations.

2. The current and planned services and operations of National Datacast are directly involved in the mission of public television, and are not ancillary or supplementary uses of analog or digital spectrum. National Datacast provides data transmission services, not video programming services. The Commission has imposed no commercial restrictions on the data services of National Datacast transmitted on the analog signals of public television stations. Teletext Transmission, 53 R.R.2d 1309, 1322 (1993). Profits, after payment of income taxes, are employed to help defray the costs of public television stations.

3. An illustration of the data service provided by National Datacast is the agreement with WavePhore, Inc. relative to its "WaveTop" service, a high-speed multi-media data delivery service disseminating information in text, graphic, audio and video

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format concerning news, stocks, children, family, entertainment and other subjects. WavePhore, Inc. compensates National Datacast for this data transmission service. In addition, through PBS Previews, WaveTop users receive the latest information about new PBS ONLINE web sites and upcoming public television programs, including PBS' weekly signature series like Frontline, Nova and Mystery; WaveTop users also receive information on Ready-to-Learn/PBS Kids programs; and, resource materials are provided regarding the subjects of many of the public television programs as well. This information extends the reach of public television to users of the WaveTop service.

4. Another illustration has been arrangements by National Datacast for its transmission of the "electronic program guide" of StarSight Telecast, Inc. This guide has provided television program schedules and related program information, including closed captioned program schedules, to viewers using the StarSight service by means of cable systems, DBS and off-the-air transmissions to television sets and computers. In addition to the schedules of public television programs, StarSight has disseminated detailed information about the programs and their subjects; again, extending the reach of public television to the customers of the StarSight service.

5. National Datacast's operating experiences with the analog VBI are a precursor to its anticipated use of digital spectrum. As an example, National Datacast envisions the development and dissemination of a comprehensive "public

television electronic information guide" to navigate interested persons through video and nonvideo program and other services of public television, including the programs broadcast by the stations and additional material concerning the subjects of the broadcasts. This will be a unique service, emanating from the day-to-day work of the stations, PBS and other related organizations. While cable systems have their own program guide capabilities to be sure, neither they nor any party outside of public television itself, can possibly duplicate such a comprehensive index of constantly changing information. In this manner, National Datacast will provide navigation to high quality educational, informational and entertainment resources that deepen the viewers' understanding of the world around them.

6. In considering the position of National Datacast in relationship to the agency's regulations and policies, it is important for the Commission to recognize the difference between commercial uses and ancillary/supplementary uses. The fact that National Datacast operates at a profit to generate funds to help support public television does not, in and of itself, mean its services are "ancillary or supplementary" under Section 336 of the Communications Act:

(a) In the Teletext Transmission ruling cited earlier, the Commission imposed no restrictions on the commercial operation of data services using the analog vertical blanking interval, including advertiser-supported services, by public television stations or entities affiliated with public

television. The force of that ruling remains unaltered by Section 336 and no restrictions should be applied to National Datacast's data transmission in the digital spectrum of public television stations. This comports with ¶30 of the Commission's rulemaking notice in this docket; however, to the extent the Commission there assumes that, or seeks comment on the issue of whether, such data services are ancillary or supplemental to the mission of public television, the answer is that no such assumption or hard-and-fast regulatory position should be made or taken.

(b) There is nothing in the statute from which the phrase "ancillary or supplementary" can be read as the sine qua non of any and all commercial operations and services by a public television entity. Commercial data services are not necessarily ancillary or supplementary to the mission of public television under Section 336. Non-mission-related data services would appear to be<sup>1</sup>, but mission-related data services clearly are not. For this determination, the Commission must consider the mission-related nature of the data services themselves.

(c) When that is done, it is clear that the data services and operations of National Datacast are not ancillary or supplementary to the core video programs and services broadcast

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<sup>1</sup> National Datacast believes that Commission licensees should be permitted to offer commercial data services solely to generate revenues, albeit as "ancillary or supplementary" services under Section 336. If National Datacast were to do so, such services similarly would fall within that statutory meaning. As has been indicated, such services are not currently provided by National Datacast or in its planned operations.

now and in the future by public television stations. As the examples set forth above illustrate, the services and operations of National Datacast advance the statutory mission of public television no less than the stations' programs and other services that enhance the lives and experiences of public television viewers. One increasingly important element of the work at PBS, the stations and National Datacast is the use of the Internet to extend the reach of public television with regard, not only to television programs, but to the entire learning process about the wide-ranging subjects of those programs. That is precisely the nature of services provided by National Datacast, now and even more so in the future.<sup>2</sup> Thus, irrespective of National Datacast's commercial nature, its substantive services and operations are central -- neither ancillary nor supplementary -- to the statutory mission of public television.

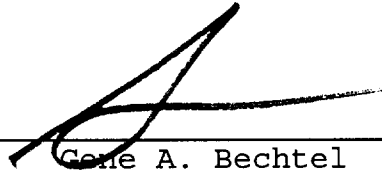
7. As public television engages in digital-based 21st Century broadcasting, the growth and diversity of educational capabilities can reasonably be expected to grow even beyond today's vision. In fashioning its regulations pertaining to "ancillary or supplementary" uses under the statute, as well as companion regulations pertaining to must-carry rights, the Commission should adopt a flexible approach that embraces, and will continue to embrace, the public broadcast landscape of the future...permitting and encouraging transmission of, and

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<sup>2</sup> As in the WaveTop service described in ¶3, the data transmissions may include video material, but not video programming services, as well as text, graphics and audio.

mandating carriage of, data services such as those described in these comments which relate to and/or enhance programming and services within the statutory mission of public television.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Gene A. Bechtel", is written over a horizontal line.

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